

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

**MEMORANDUM AND ORDER**

This matter is before the Court upon the motion of Vincent Rodgers, an inmate at the Federal Medical Center in Lexington, Kentucky (FMC-Lexington), to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 [Doc. #1]. See Rule 4 of the Rules Governing § 2255 Proceedings for the United States District Courts.

On January 5, 2004, movant pled guilty to one count of possession with intent to distribute cocaine base and one count of possessing a firearm in furtherance a drug trafficking crime. See United States v. Rodgers, Case No. 4:03CR660(CEJ) (E.D. Mo.). On April 12, 2004, movant was sentenced to a 147-month term of imprisonment, a 4-year supervised release term, and a \$200 special assessment. This Court's records indicate that movant filed a notice of appeal on April 12, 2004, and that the appeal is still pending as of the date of this memorandum and order.

Liberally construing the motion, movant alleges that his convictions and sentences are invalid because: (i) he was denied effective assistance of counsel; (ii) his counsel failed to argue

that the indictment did not specify the amount of drugs in his possession; (iii) the government failed to verify the prior sentences used to enhance his federal sentence; and (iv) it was illegal to use the prior convictions in determining his federal sentence.

As noted above, movant currently has a direct appeal pending before the Eighth Circuit Court of Appeals. See Rodgers v. United States, No. 04-1881. Therefore, movant's § 2255 motion is prematurely filed and must be dismissed. See United States v. Jaqim, 978 F.2d 1032, 1042 (8th Cir. 1992); Masters v. Eide, 353 F.2d 517, 518 (8th Cir. 1965).

In accordance with the foregoing,

**IT IS HEREBY ORDERED** that movant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 [Doc. #1] is **DISMISSED**, without prejudice, as prematurely filed.

An appropriate order shall accompany this memorandum and order.

Dated this 17th day of June, 2005.



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UNITED STATES DISTRICT JUDGE